

**CITY OF NEWARK
DELAWARE
PLANNING COMMISSION
MEETING**

January 6, 2009

7:30 p.m.

Present at the 7:30 p.m. meeting were:

Chairman: James Bowman

Commissioners Present: Ralph Begleiter
Peggy Brown
Angela Dressel
Mary Lou McDowell
Rob Osborne
Kass Sheedy

Staff Present: Maureen Feeney Roser, Acting Planning and Development Director

Chairman James Bowman called the Planning Commission meeting to order at 7:30 p.m.

1. THE MINUTES OF THE DECEMBER 2, 2008 PLANNING COMMISSION MEETING.

Mr. Rob Osborne: Mr. Chairman, on page 1, the minutes read that Joe Russell was in attendance. That should be Peggy Brown.

MOTION BY OSBORNE, SECONDED BY BROWN, THE MINUTES OF THE DECEMBER 2, 2008 PLANNING COMMISSION MEETING WERE APPROVED AS CORRECTED.

2. REVIEW AND CONSIDERATION OF AMENDMENTS TO THE ZONING CODE ESTABLISHING A PARKLAND “PL” ZONING DISTRICT.

Ms. Feeney Roser summarized her report for the Planning Commission which reads as follows:

“As noted in the October 27, 2008 adopted Newark Comprehensive Development Plan IV, the Planning Department has provided the report below regarding assigning a special “parkland,” category for all City of Newark publicly owned nonfloodplain open space and parks. While traditionally these properties have been assigned City zoning categories reflecting the adjacent zoning district, as noted in the Plan, to better illustrate and underscore the uses of the properties, Plan IV calls for a new open space zoning district category.

The Planning and Development Department’s report on this matter follows.

Other Jurisdictions

To provide background and related information concerning the development of a parkland or open space zoning category for the City, the Planning and Development Department consulted the following:

Ann Arbor, MI, Schedule of Use Regulations.

Cambridge, MA, Zoning Guide.

Cecil County, MD, Zoning Code.

Chapel Hill, NC, Zoning Code.

Dover, DE, Zoning Code.

Franklin Township, NJ, Master Plan Amendment.

Hermosa Beach, CA, Report to the Planning Commission.

Lacey, WA, Zoning Code.

Morrow County, OR, Zoning Code.

Napa, CA, Municipal Code.

New Castle, DE, Zoning Code.

New Castle County, DE, Unified Development Code.

Shawnee County, KS, Comprehensive Zoning Regulations.

Based on our review of these ordinances and regulations from other communities, the Planning and Development Department suggests the following:

Zoning Code Amendments

1. Amendment One:

Amend Zoning Code Section 32-5, **Classes of districts**, by adding the following:

“PL Public Parkland (Parks and open space).”

2. Amendment Two:

Amend the Zoning Code by adding the following new Article and Section:

“ARTICLE VIII, Public Parkland District

Section 32-24. PL districts (public parkland and open space district).

(a) In a PL district, no building or premises shall be used and no building shall be erected or altered which was arranged, intended, or designed to be used, except for one or more of the following uses:

- (1) Park, forest preserve, conservation area, playground, athletic field, recreation building, community center, and open space for active or passive recreational use owned by the City of Newark and/or the State of Delaware.
- (2) Accessory uses customary incidental to the uses permitted in this section.
- (3) Water tower, water storage tank, water reservoir, water pumping station and water treatment plant.
- (4) Municipal sewage pumping station and sewers.
- (5) Right-of-way, street.
- (6) Swimming pool, public.
- (7) Utility transmission and distribution lines.
- (8) Public transportation bus or transit stops for the loading and unloading of passengers.”

Lands Designated PL (Parkland)

The attached list from the recently adopted Comprehensive Development Plan VI shows the City parkland that would be designated PL on the City's Official Zoning Map. Please note that portions of these properties that are located within the 100 year floodplain will continue to be designated "OFD." Please note, as well, that the State owned property along the White Clay Creek within City limits north and west of the City water treatment plant site property will also be designated "PL," to reflect its parkland and open space use.

Recommendation

The Planning and Development Department suggests that the Planning Commission review this report, receive public input, and **recommend that City Council approve the proposed Zoning Code amendments above establishing a PL (parkland) zoning district designation and assigning the PL zoning to the City Zoning Map as required."**

Mr. Bowman: Are there any questions for Ms. Feeney Roser?

Mr. Osborne: On the second page, under amendment 2, # 8 it says, "Public transportation bus or transit stops . . ." It feels like it conflicts with parkland. I recognize there probably needs to be some kind of zoning for that, but it just feels like it is out of place under this title. Maybe it is just in the name more than anything.

Ms. Feeney Roser: We would want to have an opportunity for folks to access the parkland via public transit and will need stops for them to get on and off the bus. The idea is really to be able to put a transit stop at the edges of the property along the street right-of-way, if it exists, and at a minimum, not to preclude it.

Mr. Osborne: When I read that, I was envisioning the parkland being paved over for a transit hub more than a stop. I don't know how broadly or narrowly the word "stop" is interpreted?

Ms. Feeney Roser: The thing about the designation is that it doesn't necessarily mean forever green space. It means that it could be used for recreation space or community centers or things of that sort that may involve some paving. I don't think there is a problem with excluding multi-modal transit hubs. You can put that in your motion. I don't think that is an issue, but we would like to be able to have transit stops available, with the associated paving.

Mr. Osborne: I think having the parkland accessible to public transportation is something that the land should be zoned to allow and facilitate the public coming to it by way of public transit. Again, I will open it up to the rest of the Commissioners to see if it generates any more discussion. I guess I was envisioning it being used for more than that.

Mr. Begleiter: Just to comment on that briefly. We have the reservoir site, which has some paving on it. There is a paved walkway around the reservoir itself, there is a paved walkway that goes up to the reservoir along the side, and of course, there is a parking lot at the base. Across from the reservoir currently is just grassland that was used as a construction site during the entire duration of the two or three-year construction of the reservoir. Everybody in the area understood that it wasn't going to be a construction site. It's parkland. I think there are legitimate reasons, and I think transit stops are good examples of ways to make parkland accessible. If you wanted to put the transit hub parkland in place, you would want to have a discussion about that, but to have a bus stop there is a good thing. It is a positive rather than a negative thing.

Ms. Kass Sheedy: I wonder if I could suggest maybe some way of taking care of the issue because I can see we don't want parks turned into transit hubs, but also other people strongly believe that there should be public transportation to parks and they should be accessible to people without cars. Maureen, could we take care of the issue by taking #8 and moving it up to #2 so that #2 would read "Accessory uses customary incidental to the

uses permitted in this section *including* public transportation bus or transit stops for the loading and unloading of passengers.” That would make it clear it is for park use.

Ms. Feeney Roser: I think that will work.

Mr. Begleiter: That is a good idea.

Ms. Sheedy: Does that work for you, Rob?

Mr. Osborne: That sounds good.

Ms. Angela Dressel: Could you read again how you want that to read?

Ms. Sheedy: #8 would come out and #2 would read, “Accessory uses customarily incidental to the uses permitted in this section including public transportation, bus or transit stops for the loading and unloading of passengers.”

Mr. Begleiter: Here is a minor tweak to that, how about changing stops to access? That would give you the opportunity to have a pull-off rather the implication of a stop being multiple buses and things of that type. “. . . public transportation bus or transit “access” for the loading and unloading of passengers.”

I would like to ask, Maureen, if this designation is referring to publicly owned nonfloodplain open space and parks. The thing I want to focus on is “publicly owned.” Everyday I pass signs on the Curtis Mill site, which is one of those listed on page 17 as one of the open spaces which have signs on the fence that say “City of Newark private property, no trespassing.” I have been meaning to ask about that for sometime. I think it is probably some overzealous and uninformed sign maker – but maybe not. That is not private property by anybody’s definition. It is parkland by this definition. My question is, do sites like the Curtis Mill site belong in parkland or are they private property?

Ms. Feeney Roser: They belong in parkland. I think those signs went up during demolition or very near demolition when the City was concerned about trespassing on the lot for safety purposes. I will look into it. Curtis Mill is not private property.

Mr. Begleiter: It is public land. Okay, so we are referring to public land such as sites like the Curtis Mill site. That leads me to ask, because the designations here refer to things like water towers, water storage tanks, water reservoirs, water pumping stations and water treatment plants, all of which in #3 on page #2 were written in because of the existence of the reservoir and, perhaps, one or two other sites in the City. But, would the Curtis Mill smoke stack and piles of rubble and the concrete pads that are hanging around there be outlawed under this zoning designation? You could not have a Curtis Mill smoke stack there, it would have to disappear. It is not something that is customarily incidental to the uses permitted in parkland is it?

Ms. Feeney Roser: In the case of the stack – not the piles of rubble so much – there has been community interest in preserving that as a historic artifact. As a historic artifact deemed worthy of preservation, it would be allowed and it would be incidental to the parkland.

Mr. Begleiter: So, that would not be a conflict with this zoning.

Mr. Osborne: I remember years ago, in the Fairfield Park, there used to be a silo and a barn in the park. I don’t think the barn exists in the park anymore. The silo may have been removed also. I assume that way back when that park was deemed a park, it was acquired from a family. It came with it.

Mr. Begleiter: The last thing I would like to raise is more serious. I would like to go back to my customary issue and point to #7 – utility transmission and distribution lines – and ask whether at this moment when we are creating a new zoning designation whether we really should not put it in. I understand that there is plenty of parkland around the City of Newark that has utility implements plopped down in them, probably including some that under this designation would have to be grandfathered or whatever. I

personally think that it would be a good thing for the City to require the City to make a case for an exception each time it wants to put a utility pole in parkland and have it come and say, here's why there is no other way to do this other than to put a utility pole in a place in which we had otherwise designated as open space. I would like to see – maybe I will do this more formally in a motion later – what anybody thinks about the idea of striking #7 all together. Just leave it out. We won't have to comment on utility lines, but just let it be known that if they want to put utility lines in there, they have to come and ask for it. Anybody else care to comment on that?

Ms. Brown: This goes along with the same thing. If it is parkland, I would assume it is either open space or recreation space. Is that the definition of parkland?

Ms. Feeney Roser: Active and passive recreational space and facilities. So, it could be a community center, it could be basketball courts, or it could be a field.

Ms. Brown: Utility transmission and distribution lines. That does not necessarily include lighting, for instance, for tennis courts or does it?

Ms. Feeney Roser: It would and it would also include sewer lines and water lines. Let me just say, I understand the point but I am concerned about putting a burden on this district that would apply only to the City of Newark and would not apply to private developers because distribution of utilities is in every zoning district that we have. My other concern would be that if, in fact, we are putting an additional financial burden on the City to purchase parkland or to improve parkland it already has by making us bury electric lines, because I think that is really what we are talking about here. Would the City be in a position to do that, or are we, in fact, limiting the City's ability to acquire more open space by putting a financial burden saying we couldn't run electric lines.

Mr. Begleiter: I would like to address that. First of all, I haven't said anything about removing utility transmission facilities from parkland that is already there. If you have a park that has a barn in it, its there and we are not going to take it out. Things are grandfathered in places where they fit now. I don't think the intent of creating this zone is to go around to all of those areas and see what is on there and see if anything needs to be removed. At least I don't believe that is the intention. So, that wasn't my intention. I don't think it will create a burden on the City in terms of acquiring new parkland. If the City wants to acquire new parkland and they can find some and annex it, that is wonderful. There is no objection to that. If that land currently has transmission poles on it, then that is what it has. It doesn't mean the city has to remove them anymore than changing a designation that we do all the time from one kind of housing zone to another residential zone, means then that we have to scour the property and say the for sign sale on this property is now in the wrong kind of zone and, therefore, it has to be removed. We don't do that, I don't think. My intention is to say that we shouldn't and the City shouldn't acquire new land or place new facilities in land that we have designated in this new way as parkland.

Ms. Feeney Roser: I think the issue is, will utilities be placed overhead or underground, not the district transmission or distribution of utilities across the nonfloodplain land. That is your issue, right? You don't want utilities overhead?

Mr. Begleiter: My issue is related to aesthetics. I don't know whether it is exclusively overhead, certainly mostly overhead. If an underground pipe needs to be laid through the park transmitting water from the reservoir to someplace else, for example, then that is not an aesthetic issue and so, if the City needed to do that to place an underground transmission line into a parkland, it would send a memo to this Commission or to City Council saying this will have no aesthetic impact. We propose to put the transmission line 10 ft. under, or whatever, and cover it with grass, so from the surface after our construction is done the parkland will look and feel exactly as it looked and felt before the construction was done. It doesn't pose any financial responsibility, but it does make the City think twice about what kind of transmission facilities it wants to install. It might say, oh we are going to have trouble putting an overhead line on this parkland because that guy on the Planning Commission is going to complain about it. So, maybe they would say, but it wouldn't cost us that much to just bury a new line. That is my intent.

Mr. Osborne: I am going to play devil's advocate for a second, Ralph. I am just wondering if this kind of desire is something better addressed through a building construction permitting process where the City adopts a new building code that says electrical lines for new construction would be buried rather than in a zoning amendment.

Mr. Begleiter: I would certainly love to see that. We are not amending the Building Code. All we are doing is indicating what kind of uses could be made of a newly created zone in the City. We are not changing anything that already exists. We have decided to create a new zone and we are saying, are we going to allow hospitals in that zone? No. Are we going to allow transit hubs in that zone? No. Are we going to allow bus access in that zone? Yes. Are we going to allow utility transmissions? No.

Mr. Osborne: I see the difference.

Mr. Begleiter: I intend to pursue the issue of utilities further in a broader way, but here is a good case, I think, where we can start by not saying, yes, of course, utilities, right, no problem, anywhere they want. Here is a place where we can say not in this zone. If the City comes to us and says, the developer of this site has to pay for the sewer access and water meter and most of the requirements we placed on the developer. In all routine projects, we are essentially saying to the City in this case, if you want to put a utility transmission in parkland, come to us and just explain why there is no other way, or it is too expensive to do it another way, and then we have to make that decision the same as we do in all those other cases.

Ms. Feeney Roser: I think what we are talking about, though, is like a special use permit for utilities. If you strike this entirely, there is no such thing as a use variance. The City is exempt from zoning so, I guess, we could do it anyway. If you want to have control over what something is going to look like, you have to allow it first of all, but you could perhaps add a special use permit requirement.

Mr. Bowman: Let me comment here, and correct me if I'm wrong Maureen, once the zoning is passed and even for the next item on the agenda, to bring that piece of property in and it is adopted into the City, we don't get a review on what the City does with that piece of property. If the City wants to build a tennis court on existing parkland, to the best of my knowledge, that does not come before the Planning Commission.

Mr. Begleiter: Right, but if it wanted to build something that is not included in this list, it would have to do so.

Mr. Bowman: I don't think so.

Ms. Feeney Roser: Technically, the City would be allowed to do anything that is not included in the list. That is not our intention, but the City is exempt from zoning.

Mr. Begleiter: So, what is the point of having a list?

Mr. Bowman: I am not sure that it is necessary to have a list, and that is a whole different point. I believe that at some point we have to allow the managers in the various departments in the City – Parks and Recreation, Planning, etc. – knowing full well that there is some concern about aerial transmission lines, for example, to do the job in the most economic and proper way for a piece of property, particularly in City parklands. So, if we leave this here as the list is, I think it does give some definition to what can be done and what can't be done. I think we do have to allow some judgment to the people we are paying a salary to make proper use of the land. I won't have any problem having that happen. I think they understand that in a park it might be in the best interest to put the transmission lines underground unless it was totally unfeasible to do so. You might have to put a transformer in somewhere at ground level to operate lights for tennis courts, for example, that type of thing. Are we going to say we can't put that in because it doesn't necessarily blend in with the park? My recommendation would be to leave it as it is and let the City Management and the Parks and Recreation and Planning Department deal with it. That is what they are getting paid for. And, I think they hear constantly from a lot of different places that we don't need to hang any more wires from poles,

particularly in this kind of situation. I don't know too many of our parks now that have lots of wires running through them necessarily.

Also back to the bus stop issue. I think the word "stop" has always meant to me that that is a spot on the corner with a sign on it that says "bus stops here." I think you are better off with the word than you are with "access" because the access, to me, is a much broader word in terms of allowing multiple buses into the facility than it is if you put a stop in the spot, but that is semantics. I don't think we need to overplay this.

Ms. Brown: Maureen, what is the rationale of including right-of-way to parkland?

Ms. Feeney Roser: This was really to allow us opportunities for development. If we were to acquire a big piece of land for parkland and we wanted people to reach different parts of it by vehicle, you would have to put a street in. Or, if you were going to do a series of community centers or something, you may have a public street run through it.

Ms. Brown: This doesn't mean, for instance, the parklands here, these streets here, there is another street over here or a developer wants to build something over here that doesn't have access, that we would erect a street to the parkland? My point is, access to the park I understand, but access to something beyond the park where we would really destroy the nature of parkland, that is my concern.

Mr. Bowman: If there is a clear-cut case where it does come before the Planning Commission, the Commission can say "no way." I would suspect that the Planning Department would say "no way." We are not going to put a thoroughfare through a park just for the convenience of the developer. At least I would hope not.

Ms. Brown: That is why this wording bothers me. It says "right-of-way" and if it is to the park, fine. But, if you have a street running through a park, that destroys the park for safety and things like that. The right-of-way street wording bothers me. I am not sure how we can fix that so we don't have a developer coming back and saying that a parkland designation says that you can have a right-of-way through here.

Mr. Bowman: Look at the punctuation. Right-of-way may be a sewer right-of-way. It doesn't mean street.

Ms. Brown: But, then you have street.

Mr. Bowman: But, the street can be exactly what Maureen says – a road to access a community center, maybe a dead-end.

Ms. Brown: I am just concerned about this coming back and smacking us in the face sometime because we have in here, you can have a street in a park.

Mr. Bowman: Here, again, the value is going to be a street that doesn't do anything but serve the park itself. That is going to come before this Commission.

Ms. Brown: It is, but you know and I know that lawyers and representatives and others who want . . .

Mr. Bowman: We will be faced with that until all the lawyers have been removed from the face of the earth which is never going to happen.

Ms. Brown: But, my point is, I am worried about this.

Ms. Feeney Roser: I think the point is that if it is City owned property, the City will have to decide whether or not the street is something that is good for the community. I don't want to take anything out that would stop us from having access to the properties. If we found a piece of land that we could build a community center in the back of it, you would have to build a street through it to access the community center, that would still be a good park.

Ms. Brown: I agree with that, I'm talking about . . .

Ms. Feeney Roser: I understand your concern, I just don't know how you can make that distinction in a use category.

Ms. Dressel: Could we use instead, "right-of-way, street for access to these public buildings," so that it does not allow for a road to go through? It would only be, "right-of-way, street to provide access to permitted site." Would that help?

Ms. Feeney Roser: We would have to define what the permitted site was.

Ms. Mary Lou McDowell: What about additional park access or something like that?

Ms. Dressel: Or, to allow access within the park. You could put the within in there, then it is saying that it is not to be used to get from one site to another. The plan I am thinking of right now is up at the Hockessin Athletic Center. They have one road going in and out, but it is not providing access into the development that is right next door to it. So, you could say, providing access to these public buildings, parkland and park facilities.

Ms. Brown: I just don't want a street, even with City trucks going straight through there, if they decide at a later date that they want to put a storage facility back there, and we have kids playing ball and we have trucks rolling down the road, I think that defeats the parkland use.

Mr. Begleiter: Or a utility transformer.

Ms. Feeney Roser: Any kind of municipal service, we are going to need access to it.

Ms. Brown: I understand that. My point is, I don't want us making this a public thoroughfare from point A to point B and destroying the parkland or the open space. It defeats the whole purpose of having a parkland designation.

Mr. Bowman: Any further comment before we open it up to the public?

Mr. Begleiter: Jim, I'm curious, you said it would be a clear-cut case if the City wanted to put a street through parkland. It would be a clear-cut example of something that would come before the Commission. Why would that be a clear-cut example?

Mr. Bowman: Because that would be, I believe, a part of the project that would be brought before the Planning Department by the developer.

Mr. Begleiter: There is no developer involved here. This is parkland.

Mr. Bowman: I understand that, but if they came along and said, I want to build this development and as a result of that we are going to propose to put a street through, that is certainly something that should come before this Commission and before the Planning Department.

Mr. Begleiter: I understand you believe that. I just wondered why you felt that was the case.

Mr. Bowman: I just believe that is the case. We don't have any test cases for that.

Ms. Feeney Roser: If you have an adjacent property that wants to be developed and their proposed access is going to have to be through a park, then you are going to see it.

Mr. Bowman: Absolutely.

Mr. Begleiter: It doesn't matter, I don't think we will ever see it because I think the Planning Director would say that there is no access to that development. You have to find access to it.

Mr. Bowman: At that point the case is closed.

Mr. Begleiter: My concern is about the people who actually do have the power to build in parkland, and that is the City itself.

Mr. Bowman: That is correct.

Mr. Begleiter: But if Maureen says that the City is exempt from zoning, then who would be the actors who could do anything on designated parkland. The answer is there is only one actor who can do anything on parkland and that is the City, and it is not subject to any of these restrictions that are written into the PL zone.

Mr. Bowman: It is certainly subject to the individual citizen going to their Council person and saying, we object to what is going on. We do have the elected official process and you do have that because the Mayor and Council can stop anything as far as the development of the parkland. They have that power.

Ms. Feeney Roser: These allowable uses are set as parameters so that Newarkers can have some assurance that this is the intent of what we would do with parkland. And, anything that would go on there, while we may be exempt, doesn't mean that Council would let us do it.

Mr. Bowman: Absolutely. If you had 200 people show up here at a Council meeting over a proposal on a parkland that was going to put a soccer stadium in the middle of one of these places for \$50 million dollars, you would find real quick that that would be stopped. I am using that as an extreme example. But, that is the process that is going to stop that. The citizens do have an impact, I hope.

Ms. Brown: If they know what is going on.

Mr. Bowman: That, in and of itself, is a whole different issue. Or, if they pay attention to the information they are provided. Anyone else before we open it up to the public?

Ms. Dressel: I would like to go back to #7 and just propose an idea, rather than eliminating it, saying instead, utility transmission and distribution line placed underground when feasible, so that it acknowledges the idea that the Planning Commission has stated on many occasions that we prefer to see construction happen without the overhead power lines in, I have to believe that it is actually feasible and cost effective in the new situation because the developers are always required to do that. And, housing developments have the wires all buried and everything is buried. So, I have to believe that the City would be able to handle that cost. So, perhaps, if we just add a few words there, placing these underground. I don't know if that would help to get the idea that we don't want these, and if they are going to be there, we want them to not be visible.

Mr. Osborne: I suppose a use for this parkland could also be an electric substation under the way this is written, or under what you said, Maureen, about the City being exempt from zoning?

Ms. Feeney Roser: It is possible.

Mr. Osborne: I'm thinking about in the context of the next item on the agenda, the new land that the City is taking. I live closer to that and I would somewhat object to an electric substation.

Ms. Feeney Roser: Depending on its size and where it was on the property, it seems to me if utility transmission and distribution is there, then an electrical substation would be included as possible.

Ms. McDowell: I am listening to all this discussion and I am thinking about the park on the corner of Paper Mill Road and Cleveland Avenue – Olan Thomas Park – and there is a substation. I am trying to recall what type of lines are going across the park.

Mr. Begleiter: Not to mention all the poles that are planted in the park.

Ms. McDowell: I am also trying to think which came first.

Ms. Feeney Roser: The substation came first.

Mr. Bowman: By far and away the substation was first.

Ms. Feeney Roser: It is actually Delmarva Power, I think.

Ms. McDowell: And the access road to City storage.

Ms. Feeney Roser: That was there before the park, too.

Ms. McDowell: I was just trying to get a timeline of what came first and how many lines because I think about it, I don't think about all the poles. Yes, now I remember them all.

Mr. Begleiter: I don't know if they were all there before the park. I suspect that many of those poles were planted after the parkland was designated. We have to start somewhere, and I think the City, in this particular case, where we are creating a new zone, we have the opportunity to say to the City, this is not a use we would like to see in parkland. If you want to have it be a use in parkland by all means, make the pitch, sell us on it. Tell us how low the impact is going to be on this parkland when you propose to put this very skinny pole with camouflage painted on it. Have them make the pitch rather than the other way around which is the basic underlying assumption, we can put a utility pole anywhere we want, and if anyone wants to stop us, they are the ones that have to make the effort and go through the process of trying to undo something that has been done for many years and should always be done in perpetuity.

Mr. Bowman: Let's open this up to the public.

Mrs. Jean White: 103 Radcliffe Drive. First, I want to say I support the idea of giving a separate zoning category. I was at some of the workshops of the Planning Commission for the Comprehensive Plan, so I support that.

First of all, there was some discussion here on page 2 of the second amendment on (a) (2), and I felt that a word had been left out and it should read, "Accessory uses customary or incidental to the uses permitted in this section."

I know that now Kass Sheedy has made a suggestion to move up the public transportation part up to there, but I still think it still reads better, "customary or incidental." I think that is better. I guess I happen to agree with Mr. Bowman that "transit stop" is a better word. This has been used, for example, University Courtyard and all the (inaudible) that they had to provide a pull-off into the curb so that the buses could move forward. That is just my personal opinion. When I look through all the parkland – it is always impressive to see this long list – I didn't see the James Hall Trail. Then it made me wonder whether the City owned that or does the City own part of it. I know that they certainly have been involved with part of it. Is the James Hall Trail either all or part owned by the City?

Ms. Feeney Roser: It is partly owned. I don't believe the whole thing is. Part of it may be State and part may be privately held. I will have to check on that.

Mrs. White: I was going to suggest that up there with (a)(1) where it talks about park, forest preserve, conservation area, playground, athletic field, recreation building, etc., that bikeway be put in. And I was also going to make the suggestion that historic monument or historic artifact to take into account, which you already discussed, the Curtis Paper Mill Stack. There could be other occasions in the future when some historic component of a park . . .

Mr. Bowman: Is that under item 1, Mrs. White?

Mrs. White: Item (a) (1) I would add bikeway or bikeways and I would add historic monument or historic something to it to be inclusive there, and you already did discuss

that element (adding it). It would only be if it were in a public park. Something historic that wasn't in a public park wouldn't be relevant.

I also would be opposed to paving over a good portion of our parks, but so this may not be necessary to put parking connected with the park, it may come under this customary or incidental uses. You may not want to put it in, but on the other hand, whether it is Handloff Park, whether it is George Read Village Park, whether it is Karpinski Park, you name the park, they have parking, I don't know whether that was parking in connection with the park whether you would want to put it in or not in connection with the public transportation bus or transit stop. Maybe you feel that that would open a can of worms to actually state it, but you could mention the parking specifically or you could just say its customary or incidental. I will just throw that out to you.

As far as the right-of-way, my interpretation of this is it should be there just the way it is. But, if you take Handloff Park that used to be Barksdale Park, and you have the road going by, every road, as I am sure people here know, has a right-of-way that is beyond the actual curb. It is particularly true on State roads, but it is true on streets. If you look at these, you will see that the right-of-way goes beyond the actual curb. So, that is what I am thinking, if the City already owns a park that is next to a street, there is 10 to 15 feet that is already part of that right-of-way. If it is a City street then the City has the right to use that right-of-way, if it is a State road then the State, basically, owns the right-of-way as well as the street. It is not just like a road we are going to put into a park. That is my interpretation.

The utility and transmission and distribution lines, I was thinking of putting existing or necessary utility transmission and distribution lines. So, the existing ones are already there. A necessary one might be, you have a park and now you are going to put lighting in a certain area of the park. You could say necessary to the function of the park, or you could add your additional language that has already been talked about. I was thinking of the words existing or necessary. Necessary, of course, has to be defined as what is necessary. Is it for the park or is it for something else. Is the distribution line passing through the park to serve something else or is it serving the park itself.

The other point I wanted to make is that not everything in parkland is open to the public even though the parkland as a whole is. A good example is the barn and maybe the silo that used to be at Fairfield Park. The barn was used for storing the maintenance equipment. That actually went with the big farm house on the Blue Hen farm. It burned down. That is why it is not there any more, but that is off limits. The same way, I am sure, connected with the reservoir. There must be something connected with the operations that the public isn't allowed to get into even though they can walk around the outside. Or, the water treatment plant. It may be on public land, but maybe that is not considered parkland. There are things on public parklands that are off limits even though it is a public park.

I am supportive of this but I wondered if there were any practical consequences – I would see them, actually, as positive if there are – for getting a specific zoning designation for parkland rather than having it be what it is adjacent to? Generally, our parkland now is RS (residential), for example. Here is a possible example, suppose the City owned parkland and it was zoned RS, and they wanted to sell off a sliver of it and right next to it was residential development and there was some reason to do this, would such a thing have to come to the Planning Commission and go through two meetings the then go to the Council? But, definitely if they sold it off and if it was now zoned PL and you wanted to sell off an amount of land, now you are rezoning from PL to RS. Whenever you have a rezoning, it must come to the Planning Commission and it must go through two readings to the Council and then there is the public hearing for the Council. I am thinking there is a possibility that this is a greater protection, but I could be wrong. Maybe it is no greater protection than before. You say, well why would the City ever sell something off? You can imagine that there might be a land swap like there is a chance of acquiring by gift or purchase, hopefully, a significant amount of land for parkland and you sell off a little bit or you swap it in order to gain better parkland. My question is, not whether that would happen but whether by giving it a special zoning designation, this would actually provide more protection to the citizens of the parkland and does what, I

think Mrs. Brown referred to, that citizens can't react unless they know something is happening. If you have something that goes to the Planning Commission and then two readings before Council, there is no reason not to know that something is going to happen.

Mr. Bowman: Maureen, do you want to respond to that comment? As I see it, what Mrs. White said is, if the City did sell a piece of land from parkland, for whatever reason, then it would need to be rezoned. It would just come back through this whole process.

Ms. Feeney Roser: If they were going to do anything with it, it would have to be rezoned and brought back here again. The only thing I can imagine is an administrative subdivision that wouldn't allow for any new building or public road that we might sliver off a piece and it wouldn't matter if it was still PL. If some developer needed some rear yard, I guess there is the possibility there. The City's intention, as I understand it as a staff person, is to give assurance that the parkland we have will remain recreational and remain open space in that it could be passive or active open space and to give a list of assurances that this is what can go there. So, if we were to sell part of it, this is how it is zoned, it would have to be rezoned, so it would have to come back here.

Mr. Bowman: Bring it back to the table for any further discussion.

Mr. Osborne: I meant to ask about this earlier. In # (a) (1) on page 2, it says that these uses listed here are either owned by the City of Newark and/or the State of Delaware. What is an example of one of these on the list that is owned by the State?

Ms. Feeney Roser: White Clay Creek Park is all I can think of, and is not listed because it is not within the Municipal boundaries. But, it is possible that State owned parkland could be here. It couldn't be County. We are trying to cover public agencies.

Mr. Osborne: My initial reaction to that was that I can't think of anything that is owned by the State, why put it in there?

Ms. Feeney Roser: If the State were to come through with a lot of money to buy the Country Club, for example, like they have purchased some other properties around the State, then it would be within the City but owned by the State, and it would get a PL zoning district. It is included so as not to preclude the opportunity for the State to have parkland in the City.

Mr. Bowman: Any further discussion.

Mr. Begleiter: I would like to comment on the utilities issue as providing lighting for tennis courts and appropriate recreational uses- maybe lighting for, as Mrs. White mentioned, plugging in something for recreational use. I think those kinds of utilities would clearly fall under the designation of customary or incidental uses, meaning they are accessory uses that are specifically associated with the use of the land as parkland. For example, at the reservoir site there are three electric lights on the reservoir site that are not associated with the water treatment facility. They are associated with the parking lot and they are clearly incidental and accessory uses; and, of course, they need to have electricity supplied to them. So, I don't think there could be anybody that could possibly raise the question of that being a problem. If you want to have lighting for security reasons or tennis courts, or baseball fields, or whatever, and you decided that is what you want to do, then, clearly, you have to provide the facilities to allow that for recreational use. So, I don't think that is the intention of having anything to do with utility transmission and distribution lines. Just another comment on something Mrs. White raised. I can't think of anything that is on public land that could, under any circumstances, be considered private. I agree that there are some things that are off limits, of course. There is barbed wire around the house at the reservoir and probably there should be since it is off limits, but it is not private. If it is on public land, it is owned by you and me. It is owned by the taxpayers. That is why I raised that question about the Curtis Mill site signs. Signs are not important, but there is nothing about that that is private property. It is not private property.

Mr. Bowman: Are there any other comments before we make a motion?

Mr. Osborne: I am going to go back to the comment I made about (a) (1) again, and the State. Let's play out that hypothetical. If the State did want to purchase a piece of property within the City limits, I guess, right off the bat, that seems odd. I can understand the economic benefits of it, but I would wonder if it wouldn't be in the better interest of the City to arrange the deal such that the funding was provided so the City could maintain it so that we wouldn't have a third party, so to speak, coming in. Is it setting some type of precedence that we want the State to come in and run our city or sections of our city?

Mr. Bowman: Rob, I am having a little trouble understanding the relevance to this particular issue. First of all, this is a question to Maureen, is the State even bound by our zoning laws?

Ms. Feeney Roser: (inaudible)

Mr. Bowman: Therein lies the rub.

Mr. Osborne: You are suggesting that the words don't matter at all anyway.

Mr. Bowman: These matter, certainly. I am saying that there are certain entities like the State and like the University of Delaware are exempt from our zoning laws. They are a higher authority.

Ms. McDowell: So, does it even need to be named here and/or the State of Delaware?

Ms. Feeney Roser: I wouldn't take it out. It seems to me that the State can own parkland just about anywhere and this wouldn't preclude them from doing that. The City and the State, if there were some piece of land that we needed to negotiate on would negotiate who is going to take care of it, who has responsibilities for this and that, and that would go to our Council and be decided. I don't know whether it would come to this body or not depending on what it was that was being proposed. The only other public entity besides the University would be the State. The County certainly couldn't own land in the City, but the State could. So, I don't see any reason to remove it just because it is there and we don't really know that there is an opportunity at this point for it to happen. It may happen in the future.

Mr. Bowman: This can be changed at another time. Are we ready to entertain a motion?

MOTION BY BEGLEITER, SECONDED BY DRESSEL THAT THE PLANNING COMMISSION RECOMMENDS THAT CITY COUNCIL AMEND THE ZONING CODE TO ESTABLISH A PL (PARKLAND) ZONING DESIGNATION, AND ASSIGN THE PL ZONING TO THE ZONING MAP, AS REQUIRED, WITH THE FOLLOWING AMENDMENTS:

- A. REVISE ARTICLE VIII, SECTION 32-24, (a)(1), BY ADDING THE WORDS "HISTORIC OR," AFTER THE WORD "PARK," AND ADDING THE WORDS "BIKEWAY OR TRAIL," AFTER THE WORD "PLAYGROUND," SO THAT THIS SUBSECTION READS AS FOLLOWS:

"(1) PARK, HISTORIC OR FOREST PRESERVE, CONSERVATION AREA, PLAYGROUND, BIKEWAY OR TRAIL, ATHLETIC FIELD, RECREATION BUILDING, COMMUNITY CENTER AND OPEN SPACE FOR ACTIVE OR PASSIVE RECREATIONAL USE OWNED BY THE CITY OF NEWARK AND/OR THE STATE OF DELAWARE."

- B. REVISE ARTICLE VIII, SECTION 32-24 BY DELETING (a) (7) WHICH READS "UTILITY TRANSMISSION AND DISTRIBUTION LINES."
- C. REVISE ARTICLE VIII, SECTION 32-24(a)(8) BY RELOCATING THIS SUBSECTION, WHICH READS, "PUBLIC TRANSPORTATION BUS OR TRANSIT STOPS FOR THE LOADING AND UNLOADING OF

PASSENGERS,” TO ARTICLE VIII (a)(2),” AND ADDING THE WORD
“AND,” TO THIS SUBSECTION SO THAT IT READS AS FOLLOWS:

“(2) ACCESSORY USES CUSTOMARILY INCIDENTAL TO THE USES
PERMITTED IN THIS SECTION AND PUBLIC TRANSPORTATION BUS
OR TRANSIT STOPS FOR THE LOADING AND UNLOADING OF
PASSENGERS.”

Mr. Bowman: Any further discussion?

Ms. Feeney Roser: I would like you to reconsider deleting entirely #7. I understand the point you are making, but this applies to more than overhead distribution of electric. This applies to sewer and water and so, if you are really concerned about the aesthetics of utilities, we can play with the language to come up with something that you can feel comfortable with as opposed to outlawing distribution of utilities entirely. That would be the Department’s request.

Mr. Begleiter: Our feeling is that after hearing this discussion tonight, anything we put in here is essentially irrelevant because the City is not subject to its own zoning and the only actor that is capable of acting in parkland is the City. So, we are essentially saying to the public, we are designating this new zone and here is our intention but let it be known that it is merely a statement of intention and it doesn’t have any impact on the only actor who can act in public land. So, starting with that as a premise, then I don’t think there is any real reason to include any of these things.

Ms. Feeney Roser: Nor to remove them.

Mr. Begleiter: Removing them provides guidance to the City about our intention which is that this land is not to be used for those purposes, and if the City wants to use it for those purposes if it chooses, it can just go ahead and do it anyway because it is not subject to zoning. But, if it wants to be more genteel about it or however you want to phrase it, more politic about it, it could come to the Planning Commission or to the City Council with a proposal for whatever it wants to do whether it is building tennis courts or putting up a ballpark or putting underground utility through the area and say, here is what we have in mind to do for this parkland. And among the things we have in mind is to put up a water pipe underneath there, so we would know that there is no problem with that, there is no reason not to do that. Maybe there would be some other reason why, who knows, where the outfall of those pipes would be or whatever. I don’t see any compelling reason to stick it in there. Leaving it, in my view, gives the City another green light to do whatever it wants to do with utility transmission and distribution lines.

Mr. Osborne: I agree with Ralph on this and it seems like whatever wording is put in here isn’t really almost not worth the paper it is printed on, but we do have an opportunity here to make a recommendation to change it. So, I would support that. I, also, would recommend that we leave in the word stops rather than changing that to access. I do agree with the Chairman on that.

Mr. Begleiter: I would accept that amendment.

Mr. Bowman: Ralph, you have heard Maureen’s comments. Is there a possibility that you could add a second sentence to item 7 that would specify that electrical transmission lines should be located underground?

Mr. Begleiter: I think I could put it this way; nothing we are doing prohibits the installation of electrical lines or any other kind of lines in parkland. All we are doing is expressing our intention.

VOTE: 6-1
AYE: BEGLEITER, BROWN, DRESSEL, McDOWELL, OSBORNE,
SHEEDY
NAY: BOWMAN

MOTION PASSED

3. REVIEW AND CONSIDERATION OF THE ANNEXATION OF A 12.59 ACRE PORTION OF THE CITY-OWNED DUPONT STINE HASKELL PROPERTY, THE ADJOINING CSX RAILROAD RIGHT-OF-WAY, WEST OF THE “WILSON FARM,” AND NORTH OF THE SUBURBAN PLAZA SHOPPING CENTER WITH PL (PARKLAND), OFD (OPEN FLOODWAY DISTRICT) AND MI (GENERAL INDUSTRIAL) ZONING.

Ms. Feeney Roser summarized her report for the Planning Commission which reads as follows:

“As you may know, the DuPont Company recently dedicated a 10.2 acre portion of the Stine Haskell site along the Christina Creek in New Castle County to the City of Newark. As a result of this acquisition, the City, of course, should annex the property. The site is located directly adjacent on its eastern boundary to the “Wilson Farm,” property also recently annexed and approved for development by the City as part of the Saw Mill Place adult community project. The Stine Haskell property is located just west of the to be dedicated to the City open space portion of the Saw Mill Place subdivision. As a result, once this property is annexed, it will add to Newark’s landholdings within City limits of passive stream valley open space.

As part of this annexation process, the Planning and Development Department suggests that the portion of the Stine Haskell land to be annexed not to be zoned OFD (Open Floodway District) within the 100 year floodplain, should be zoned PL (parkland) our new City parks zoning. Please note, in this regard, as specified in the recently City adopted Comprehensive Development Plan IV, and as proposed in a report to the Planning Commission accompanying this item, we will be redesigning all the City’s parkland holdings with a new “PL” zone representing a new City/State open space and parks zoning category. In addition, to eliminate a potential County “peninsula” within the City, the Planning and Development Department also suggests that the adjoining CSX Railroad right-of-way be annexed with our railroad zoning category – MI.

In any case, the Planning and Development Department suggests that **the Planning Commission recommend that City Council approve the annexation of the 12.59 acre Stine Haskell parkland site with PL, MI, and OFD zoning, as shown on the attached Planning and Development Exhibit A, dated January 6, 2009.”**

Mr. Bowman: Are there any questions for Maureen?

Mr. Begleiter: Maureen, is the City taking on any potential liability in this property. I am honestly and completely ignorant of that site. I have seen it but don’t know anything about its history. Is there anything like buried chemicals or runoff? If we are annexing, are we taking on any liability?

Ms. Feeney Roser: I believe that has been researched by our Parks Department, and we are not, but I would have to go back and check for sure to tell you that.

Ms. Brown: Maureen, how do you get to this property? I have looked at the map. I, obviously, couldn’t drive.

Ms. Feeney Roser: I believe the nearest access is through Saw Mill Place through the open space that you would get to through Barksdale Road. Saw Mill Place is the old Wilson farm.

Ms. Brown: The road, once it gets to the park, is done. You cannot go any further because of the boundaries.

Ms. Feeney Roser: And the Stine Haskell property that remains.

Ms. McDowell: Or you can hike along the creek as my husband and daughters have done and gone back there when they weren’t supposed to.

Mr. Bowman: Obviously, the CSX Railroad knows they are going to get annexed.

Ms. Feeney Roser: Yes.

Ms. Brown: What is MI?

Ms. Feeney Roser: MI is a manufacturing industrial zone, which is what all the railroads in the City are zoned.

Mr. Bowman: Are there any other questions for Maureen before we open it to the public?

Mr. Osborne: I am going to follow up on Ralph's question. Does the City go through a due diligence process there and have the land tested or soil samples?

Ms. Feeney Roser: I was not part of the discussions, but I do know that they had discussions about whether the land was clean or not and what would be required.

Mr. Osborne: It doesn't necessarily need to be clean. We just need to know what we are getting.

Ms. Feeney Roser: Yes, we did go through the process with them.

Mr. Bowman: Are there any other questions? We will open it up to the public.

Mrs. White: 103 Radcliffe Drive. The first thing is, it is called Saw Mill Place, but Mr. Lang and Chris Locke, who works with him, have renamed it the Wilson Farms, so it hasn't been called Saw Mill Place. The development is not going ahead at this point, but even if you look at the development sign, it is Wilson Farms. They chose that and they asked Mr. Wilson – the son of the Wilson family who had it – if he would give his approval and Chris Locke told me that he was honored that it would be called that. I'm thinking that you should refer to it in the future as Wilson Farms. I am just passing this on, and if you could look at the development sign that is sitting there.

Secondly, I think it is entirely appropriate and good that the parkland is divided between the part that gets the PL zoning and then the part that is the Open Floodway District (OFD) because I think it is always good to emphasize what is OFD, but not only in this case but in many of the other parks listed in this other zoning parkland to PL. Many of them involve OFD and, actually, there are even a couple that are entirely OFD. So, I would like the City to keep, in addition to a list like this that gives the total acres, that some place there will be a list that give the total acres and how many of those acres are OFD and how many are PL.

Ms. Feeney Roser: We have that.

Ms. White: I will get it sometime. I think it is important. Some of them, if you just looked, you might not know where the parkland is.

In your vote you took in the previous case, I am concerned that you took out utility transmission and distribution lines. I would have preferred a sentence that you added to curtail the overhead wires and even things that were maybe just going through for something else because as pointed out by Ms. Feeney Roser, the transmission is not just electric lines, but is water and sewer. Sewer, in particular, always runs down stream valleys. So, if you look at the sewer lines, if you see the plans of the City or you even walk there, the sewer line is running down White Clay Creek. It is either running along side it or running under it. There are places where if you walk down like at Karpinski Park if you walk on the trail along there, you can see where the sewer line crosses from one side of White Clay Creek to the other. The same way is true with Christina Creek. By-the-way, the access is the Mason Dixon Trail which runs all the way up from Pennsylvania all the way through. But, the Mason Dixon Trail runs all the way down to Rittenhouse Park. It is on the opposite side of the Creek from Casho Mill Road. As you are walking on there, there are places you see a sewer line . . .

Mr. Begleiter: Mr. Chairman: The responder had ample, ample time to discuss the previous issue and this discussion is not relevant to where we are.

Mrs. White: I did not realize you were going to cut it out. These are existing things.

Mr. Bowman: What is the pertinence to the annexation to the item at hand?

Mrs. White: I am just telling you, first of all, about the accesses and that there are sewer lines that are were in bound to Christina Creek.

Mr. Bowman: Back to the subject at hand.

Mrs. White: Although, I haven't actually researched it, having walked along there, Stine Haskell actually had a chain link fence that separated for operations which, basically, are far away from this area, but they did have a chain link fence. Once I got a tour of it inside the chain link fence. My impression of this land is that it has no chemical contamination.

Mr. Bowman: Back to the table. Is there any other discussion? Hearing none, the Chair will entertain a motion.

MOTION BY DRESSEL, SECONDED BY McDOWELL THAT THE PLANNING COMMISSION RECOMMENDS THAT CITY COUNCIL APPROVE THE ANNEXATION OF THE 12.59 ACRE STINE HASKELL PARKLAND (10.2 ACRES) AND CSX RAILROAD RIGHT OR WAY (2.39 ACRES) SITE WITH PL, MI, AND OFD ZONING AS SHOWN ON THE ATTACHED PLANNING AND DEVELOPMENT EXHIBIT A, DATED JANUARY 6, 2009.

Mr. Bowman: I have a motion and a second. Is there any further discussion?

Mr. Osborne: I just noticed on the map it says 12.59 but on the recommendation from the Planning Department, it says 10.2.

Ms. Feeney Roser: That was a mistake. When I read it into the record, I read the 12.59, the right-of-way and the annexation.

Ms. Dressel: I also read it with my motion with the 12.59.

Mr. Osborne: I heard you and that is what triggered me.

VOTE: 7-0

AYE: BEGLEITER, BOWMAN, BROWN, DRESSEL, McDOWELL,
OSBORNE, SHEEDY

NAY: NONE

MOTION PASSED UNANIMOUSLY

Meeting Adjourned at 8:55 p.m.

Respectfully Submitted

Elizabeth Dowell
Secretary, Planning Commission